



Volume 2. Issue 34.

Mitzvah Haba'ah Be'aveyra

The third *perek* of *Sukkah* deals with a topic which we are more familiar with – the four species. The *Mishnah* lists a number of problems that invalidate a *lulav*; one of these being if it was stolen. The *Gemara* (*Sukkah* 30a) explains the invalidation of a stolen *lulav* due to it being a '*mitzvah haba'ah be'aveyra*' - the ability to fulfil the *mitzvah* became possible only through the transgression of stealing. Or alternatively, the point of the transgression was the moment of fulfilling the *mitzvah*. The source of this problem is the verse from *Yeshiah* (31:72), "I [*Hashem*] hate stolen offerings". Consequently the *Gemara* notes further, that there is no halachic difference if the person from whom the *lulav* was stolen has given up ownership or not.

However, *Rashi* (*Sukkah* 29b) in his commentary on the *Mishnah* explains that the problem with a stolen *lulav* is because the *Torah* writes that "they should take for themselves" (*VaYikra* 23) implying that by taking what belongs to someone else, one does not fulfil this *mitzvah*. According to this understanding of *Rashi*, there is no halachic difference between a stolen or borrowed *lulav* for the fulfilment of the *mitzvah* on the first day of *Yom Tov* (There is a debate if the *psul* is only for the first day or all days of *Yom Tov*.)

The *Tosfot* explain that '*mitzvah haba'ah be'aveyra*' only applies in those cases where the *aveyra* facilitates the performance of the *mitzvah*, but does not apply to cases where the *aveyra* is not part of the process of fulfilling the *mitzvah*. For example, if one had a *lulav* that had been worshipped as a god, the inability of using such a *lulav* is not because *mitzvah haba'ah be'aveyra*, but for another reason (see *Sukkah* 30a, *Tosfot* s.v.

'*Meshum*'). *Tosfot* are so convinced by their explanation that they claim that the text quoted later in the *Gemara* that a *lulav* from a tree that has been worshipped for idolatry is prohibited because of *mitzvah haba'ah be'aveyra* is incorrect.

There is another case of where one stole an object for the fulfilment of a *mitzvah*, however the law is different. The case is where one stole a *shofar* and used it on *Rosh Hashanah*. The *Halacha* in such a case is that the person has fulfilled their obligation of hearing the *shofar*. The question that arises is why is there no problem of *mitzvah haba'ah be'aveyra*? The answer that is offered is that the nature of the obligation of *shofar* is different to that of *lulav*. The *Torah* obligates the Jewish people to **hear the sound of the *Shofar*** on *Rosh Hashanah*. The *mitzvah* is fulfilled through the *shofar* and not with using the *shofar*. However with *lulav* the *Torah* obligates the taking of the *lulav* and therefore the stolen *lulav* cannot be used.

The third case of *mitzvah haba'ah be'aveyra* is the story that the *Gemara* brings both in *Brachot* and *Gittin*. *Rabbi Eliezer* freed his servant in order to complete the *minyan* in *Shul*. Freeing a slave is a negative prohibition of 'they shall always work for you'. The answer that the *Gemara* gives is that a *mitzvah* for the public is different and therefore the *aveyra* can be overlooked. However, according to the *Tosfot* that was mentioned above one can offer another answer, that the freeing of the slave allowed them to then complete the *mitzvah*, not that the *aveyra* and the *mitzvah* happened at the same time. Since freeing the slave now allowed the quorum to form which later would allow certain parts of *tefillah* to be recited.

Natan Rickman

Revision Questions

סוכה ג': א'-י"ד

- Can one use a stolen *lulav*? (ג': א')
- What extra requirement does *R' Yehuda* place on the *lulavim*? (ג': א')
- What are *tzinei har ha'barzel* and can they be used as *lulavim*? (ג': א')
- How large must the *lulav* be? (ג': א')
- Can one use a dried out *hadas*? (ג': ב')
- How many berries can the *hadas* have before it becomes invalid? (ג': ב')
- If the head of the *aravah* is severed, is it acceptable? (ג': ג')
- What is an *aravah* that is describe as *tzaftzafa* and is it acceptable? (ג': ג')
- Is an *aravah* acceptable if it lost some of its leaves? (ג': ג')
- How many of each of the four species must be taken? (include all opinions) (ג': ד')
- Is an *etrog* from an *ir hanidachat* acceptable? (ג': ה')
- Can an *etrog* of *orlah* be used? (ג': ה')
- Which of the following invalidates an *etrog*: (ג': ו')
- A crack?
- A hole (with nothing removed)?
- The *oketz* being removed?
- A small *chazazit*?
- Being green in colour?
- What are the two opinions regarding the minimum size of an *etrog*? (ג': ז')
- What material may be used to bind a *lulav*? (ג': ח')
- What are the two opinions regarding when the *lulav* is shaken during *Hallel*? (ג': ט')
- When, during the day, can one fulfil the *mitzvah* of *lulav*? (ג': ט')
- If someone is unable to read *hallel* and gets someone to read for them, how should they respond? (ג': י')
- What must one be careful of when purchasing the four species during a *shmittah* year? (ג': י"א')
- Initially, during which days of *sukkot* was the *lulav* taken outside the *Beit Ha'Mikdash* and when did this change? (ג': י"ב')
- Can one fulfil the *mitzvah* of *lulav* with a borrowed *lulav*? (ג': י"ג')
- Would one be required to bring a *korban* if they carried their *lulav* in the public domain on the first day of *sukkot* that coincided with *Shabbat* and why? (ג': י"ד')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
23 rd April כ"ה ניסן " לעומר Sukkah 3:15-4:1	24 th April כ"ו ניסן "א לעומר Sukkah 4:2-3	25 th April כ"ז ניסן "ב לעומר Sukkah 4:4-5	26 th April כ"ח ניסן "ג לעומר Sukkah 4:6-7	27 th April כ"ט ניסן "ד לעומר Sukkah 4:8-9	28 th April ל' ניסן "ו לעומר Sukkah 4:10-5:1	29 th April א' אייר "ז לעומר Sukkah 5:2-3

